

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Stewart N. Abramson,

Plaintiff,

v.

Evolve Bank & Trust

Defendant.

Case No.:

**NOTICE OF REMOVAL PURSUANT TO
28 U.S.C. §§ 1331, 1441 AND 1446**

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Evolve Bank & Trust (“**Evolve**”) hereby gives notice of removal of this action, entitled *Stewart N. Abramson v. Evolve Bank & Trust*, Case No. AR-13-003227, from the Court of Common Pleas of Allegheny County, Civil Division, to the United States District Court for the Western District of Pennsylvania. As grounds for removal, Evolve states as follows:

1. On July 29, 2013, plaintiff Stewart N. Abramson (“**Plaintiff**”) commenced the State Court Action in the Court of Common Pleas of Allegheny County, Pennsylvania. The Court of Common Pleas of Allegheny County, Pennsylvania is within this judicial district and division.

2. Evolve first received notice of the State Court Action by service of the Summons with the attached Complaint, the first pleading, notice, order or other paper from which it could be ascertained that this action is removable, on or after July 31, 2013. This Notice of Removal is timely filed as thirty days since service of the summons has not yet expired. *See* 28 U.S.C. § 1446(b).

3. The State Court Action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be properly removed pursuant to

provisions of 28 U.S.C. §§ 1441 and 1446, as the claims asserted in the Complaint arise under the laws of the United States and raise a federal question.

4. The federal statutes and regulations in question include, without limitation, the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, *et seq.*

5. The district courts of the United States have original jurisdiction in civil actions arising under the Telephone Consumer Protection Act of 1991. *See* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”); *Mims v. Arrow Fin. Svcs. LLC*, 132 S. Ct. 740 (2012) (“Congress did not deprive federal courts of federal-question jurisdiction over private TCPA suits.”)

6. Specifically, Plaintiff’s Complaint alleges that “Defendant Evolve Bank & Trust, or an agent acting on their behalf, initiated of made [a call] to Plaintiff’s cellular telephone using an automatic telephone dialing system, without Plaintiff’s prior express consent in violation of 47 U.S.C. 227(b)(1)(A)(iii)” *See Compl.*, at ¶ 14.

7. Evolve removes the State Court Action to The United States District Court for the Western District of Pennsylvania because it is the venue which encompasses Allegheny County, Pennsylvania. Evolve removes this action without prejudice to Evolve’s right to seek transfer of this action pursuant to 28 U.S.C. § 1404.

8. True and correct copies of the following are attached to this Notice of Removal:

(a) all process, pleadings and orders which have been served upon the Evolve in this action, including the Complaint, Summons, and 10 Day Notice of Intent To File a Praecipe to Enter Judgment By Default served on Evolve (attached hereto as **Exhibit A**), in accordance with 28 U.S.C. § 1446(a);

(b) the Notice of Filing of Notice of Removal Plaintiff of Removal (attached hereto as **Exhibit B**), which will be promptly served upon Plaintiff and filed with the Clerk of the Court of Common Pleas for Allegheny County, Pennsylvania, in accordance with 28 U.S.C. § 1446(d).

9. This Notice of Removal is signed in accordance with Rule 11 of the Federal Rules of Civil Procedure.

10. Based upon the foregoing, this action is properly removed on the basis of federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

WHEREFORE, this action is hereby removed to this Court from the Court of Common Pleas of Allegheny County, Pennsylvania. Plaintiff is hereby notified to proceed no further in state court.

Respectfully submitted,

/s/ Gretchen Woodruff Root

Gretchen Woodruff Root, Esquire

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REED SMITH LLP

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Pittsburgh, PA 15222

Phone: 412-288-3131

Counsel for Evolve Bank & Trust

Dated: August 29, 2013

CERTIFICATE OF SERVICE

I, Gretchen Woodruff Root, hereby certify that on this 29th day of August, a copy of the foregoing Notice of Removal was served via first class mail upon the following:

Stewart N. Abramson
522 Glen Arden Drive
Pittsburgh, PA 15208

Pro Se Plaintiff

/s/ Gretchen Woodruff Root
Gretchen Woodruff Root